SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1941

No. 280

■

ROSCO JONES, *Petitioner*

v.

CITY OF OPELIKA, *Respondent*

■

On Certiorari to the
Supreme Court of the State of Alabama

PETITIONER'S BRIEF

JOSEPH F. RUTHERFORD
HAYDEN COVINGTON
Attorneys for Petitioner

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Opinions Below

The opinion of the Alabama Supreme Court is reported in 3 So. 2d 76, and is printed in the record. (R. 3-9) The opinion of the Alabama Court of Appeals is reported in 3 So. 2d 74, and is printed in the record. (R. 62-65) The trial court did not write an opinion.

Jurisdiction

Jurisdiction is invoked under Section 237 (b) of the Judicial Code [28 U. S. C. A. 344 (b)], by petition for writ of certiorari.

Timeliness

The judgment of the state court of last resort (Alabama Supreme Court) was rendered and entered of record on May 22, 1941. (R. 2-3) The petition for writ of certiorari was filed on July , 1941, and within three months from the date of such judgment.

The Statute

The legislation here drawn in question is an ordinance of the City of Opelika, Alabama, in full force and effect at the time of the transaction, with pertinent provisions reading:

"An ordinance to fix and prescribe the rates for license or privilege taxes for trades, vocations, professions, and other businesses conducted within the City of Opelika, Alabama, and its police jurisdiction for the year 1939, and to prescribe certain conditions and provisions for the conduct thereof and to further fix and prescribe certain penalties for the violation of said ordinance.

"Be it ordained by the Board of Commissioners of the City of Opelika, Alabama, that the following schedule of rates for license or privilege taxes for the conduct of any trade, vocation, profession or other business conducted within the City of Opelika and its police jurisdiction for the year beginning January 1, 1939, and ending December 31, 1939, and the following conditions and provisions for the conduct thereof, and the following penalties for the violation thereof be and it is hereby adopted, to-wit: [R. 21]

"Conditions and Provisions

"1. Right of City to Revoke.

"All licenses, permits or other grants to carry on any business, trade, vocation, or professions for which a charge

is made by the City shall be subject to revocation in the discretion of the City Commission, with or without notice to the licensee. [R. 22]

"4. Penalties.

"It shall be unlawful for any person, firm, or corporation or agent of such person, firm or corporation, to engage in any of the businesses or vocations for which a license ~~may be required~~ without first having procured a license therefor, and any violation hereof shall constitute a criminal offense, and shall be punishable by fine not to exceed one hundred ($100.00) Dollars for each offense and by imprisonment not to exceed thirty days, either or both at the discretion of the Court trying the same, and each day when such business or vocation is conducted without such license shall constitute a separate offense. [R. 22]

"12. Vocations Not Specified Herein.

"Any applicant desiring to conduct any business or vocation other than those specified in this license ordinance shall make application to the President of the Commission, who shall thereon fix a reasonable license for such business or vocation and instruct the Clerk as to the amount so fixed. [R. 24]

"A

. . .

"Agents (Annual Only)

Book Agents (Bibles excepted) 10.00

. . .

Transient or itenirant agents selling rugs, antiques, goods, wares, merchandise or taking orders for same 25.00

[R. 26]

"N

"Newspapers—Daily, weekly, monthly, or periodical newspapers, or similar publications (Annual Only) 50.00

"P

"Periodicals—Dealers or newsstands selling or distributing (Annual Only) 5.00

. . .

"Peddlers, or itinerant dealers, distributors or salesmen not otherwise included in this schedule (Annual Only) 75.00

[R. 33]

"T

. . .

"Transient Agents or Dealers or Distributors of Books (Annual Only) 5.00

"Transient Dealers (Not covered heretofore in this schedule, definition same as transient dealer.) 25.00

[R. 38]"

The Alabama Supreme Court and the trial court (Circuit Court of Lee County) held that the license and tax provided by the ordinance applied to an ordained minister of Jehovah God preaching the gospel of God's kingdom by means of distributing literature explaining Bible prophecies. It was also held that such ordinance on its face and as construed and applied did not unlawfully deny petitioner his rights of freedom of speech, press and assembly and freedom to worship ALMIGHTY GOD, contrary to Section 1 of the Fourteenth Amendment to the United States Constitution. Such courts sustained the applicability of the ordinance to petitioner's conduct and decided in favor of the validity of the ordinance.

Intermediately, the Alabama Court of Appeals, in reversing the trial court, held that the ordinance was not intended to apply to petitioner, an ordained minister of Jehovah God, and that if construed and applied so as to include petitioner it deprived him of aforesaid civil rights contrary to the due process clause of the Fourteenth Amendment.

Statement

Petitioner, one of Jehovah's witnesses, is an ordained minister of Almighty God, preaching the gospel of the Kingdom of Jehovah God, The Theocracy, and as such he is consecrated to bear public witness thereto.

On or about April 3, 1939, on the public streets of the City of Opelika, he was preaching the gospel of God's kingdom by distributing pamphlets explaining present-day application and fulfillment of Bible prophecy. From persons able to contribute a nickel for two of said pamphlets he accepted such contribution, using same to defray cost of publication and circulation.

Petitioner's sole purpose and objective in thus distributing said literature was to preach this gospel, to provide to others the information contained in the literature setting forth this gospel message. His objective was not a commercial one; he was not doing the work for pecuniary gain for himself or for the publishing organization that provided said literature for him to circulate. His inviting and accepting contributions of a nickel for the pair of pamphlets taken by willing recipients was definitely *incidental* to petitioner's primary aim and purpose.

The two pamphlets he distributed were titled, respectively, "Face the Facts" and "Fascism or Freedom", being plaintiff-respondent's Exhibits 1 and 2, respectively. (R. 55-56)

THE FIRST PAMPHLET, "Face the Facts," contains two speeches delivered September 10 and 11, 1938, at London, England, to a visible audience and simultaneously to a vast visible audience by world-wide radio broadcast.

In brief, the speech "Face the Facts" calls for a frank and honest examination of the all-transcending fact that, as shown in God's infallible and inspired Holy Bible, "many centuries ago the Almighty God, who alone is called Jehovah, declared his purpose to set up a righteous government, which shall rule the world in righteousness, in which there

is no unrighteousness, and before which ruling power all human creatures shall stand equal and be given a fair opportunity to gain everlasting life in peace and prosperity.".

That the application and bringing to pass of this God-given fact is now opposed by the monstrosity of dictatorial, totalitarian rule by human creatures on earth, seeking *world domination*. As a result, all nations today are in distress, and none of the nations measure up to the perfection and righteousness and everlasting benefit Almighty God promises shall flow to all obedient peoples from His permanent government by Christ Jesus, His King.

That the Bible alone explains satisfactorily the meaning of the disturbing facts of our day, and Christ Jesus foretold the physical facts which have appeared since 1914, and He declared that such meant the end of the rule of Satan and his wicked demons over mankind, which demons are responsible directly for the deplorable conditions on earth and are now invisibly striving to put all mankind in opposition to the establishment of God's kingdom by Christ Jesus, and thereby to bring about the destruction of men and nations. One of the outstanding evidences Christ Jesus emphasized as marking the end of Satan's uninterrupted world rule would be the setting up of an abominable, desolating system of totalitarian rule, which would defy Jehovah God and Christ Jesus as King of the new world. (Matthew 24: 14-17) The facts since 1922 particularly, and which are a matter of historic record, show that the greatest religious organization of "Christendom", and operating out of Vatican City, has had and continues to have dealings with this totalitarian monstrosity and has lined up with its program of *world domination* as against the democracies, including the United States of America, which it aims to bring under its religio-dictatorial rule and control, to the denial of liberties of free speech, press, assembly and worship of Almighty God.

That Jehovah's witnesses, in fulfillment of their covenant with Almighty God and of their commission from

Him, proclaim God's kingdom and its establishment (Matthew 24: 14) and are therefore against this alliance of religion and totalitarian rule, and they expose it and its efforts aimed at depriving free peoples of liberties they hold dear. Hence Jehovah's witnesses suffer great persecution in all nations, especially where that religious system which has lined up with Fascists, Nazis and other totalitarians exercises control over the politicians and other public servants. This persecution of His witnesses Jehovah God declares He will punish by destroying the persecutors and opposers. Because public newspapers do not call attention to these incontrovertible facts, Jehovah's witnesses do so by all means of publicity, and they warn the religious opposers of their Biblically-announced fate, and also warn the people of good-will toward Almighty God and His King Christ Jesus to flee to and take their stand for the Kingdom of God if they would gain unending life in peace and plenty.

THE SECOND PAMPHLET, "Fascism or Freedom," contains the speech of that title, delivered Sunday, October 2, 1938, in Mecca Temple, New York City, to a huge assembly and also, simultaneously, by telephone lines to other assemblies and over a huge network of radio stations throughout the United States, Canada and other countries.

In brief, the speech "Fascism or Freedom" shows that in the light of Almighty God's sure promise recorded in His unerring Holy Bible, to establish His righteous government by Christ Jesus in His own appointed time, the issue now confronting all peoples is one pertaining to their eternal existence; that such issue is: "Shall the world be ruled in righteousness by Christ the enthroned King of Jehovah? or shall it be ruled by selfish, arbitrary dictators?" That the Supreme Being will settle this issue aright, and to His final settlement of this paramount issue Jehovah's witnesses call the notice of all who believe in true freedom and order and righteousness.

That Jehovah's witnesses are non-political; that as faithful ordained ministers, bound in a covenant with Almighty

God to do His will by preaching the gospel of His kingdom, they must publicly call attention of all people to the encroachments of the Fascistic-Nazi-Communistic-totalitarian systems which have arisen in these "last days" and which seek to regiment all peoples to support their vicious rule in opposition to God's announced Government by Christ Jesus, and thus to lead the subdued peoples into the ditch of destruction in the oncoming "battle of that great day of God Almighty" at Armageddon. Hence the totalitarian rule is a product of Satan the Devil, who began such system of world-rule in the days of his visible agent, Nimrod, the first dictator.

That the totalitarian tyrants have sprung up and established themselves in the religious nations of Germany and Italy, and seek to spread their dominating control over all peoples of earth, including America. In this program of conquest those tyrants have the approval and support of the totalitarian system of religion which has its seat at Vatican City in concord with Fascist Italy.

That it is the purpose of said system of religion to destroy American freedom in favor of a Fascist-Nazi-totalitarian combine, in proof of which assertion the speaker-author quotes utterances and writings of several Roman Catholic ecclesiastics, and also sets out the nation-wide acts of opposition committed by Roman Catholic prelates and their "children of the Church" in America against the exercise by Jehovah's witnesses of their constitutionally guaranteed rights and privileges of freedom of expression and of assembly and their freedom to worship Jehovah God as by Him commanded in His Bible and according to dictates of their consciences. That because its opposition to God and His Theocratic Government by Christ Jesus, and also its connivance with the Fascist-Nazi-totalitarian combine, have been exposed, that great religious Hierarchy causes the malicious persecution of Jehovah's witnesses in all lands, marked by particular violence in the United States of America. This is but the initial step in their program of taking

away like rights and liberties from all the rest of the American people. The Hierarchy resents criticism, which is constitutionally allowed and enjoyable in America. Even the policy of the nation's head is frequently criticized by other politicians. "Is the Hierarchy so sacred that it has greater privileges than the president of the United States?" (P. 24) The true Theocracy is Almighty God's administration of world-rule by His King Christ Jesus; whereas the Hierarchy would set up a counterfeit theocracy which is a rule of mankind by dictators under the religious overlordship of the Hierarchy.

That Jesus Christ, foretelling the end of Satan's world rule, warned of the coming of the totalitarian "abomination of desolation", which includes organized religion as a dominant factor, and He foretold its impending destruction by Jehovah God. Hence all persons of good-will toward Almighty God should flee from that "abomination".

NO LICENSE APPLIED FOR

Petitioner did not apply for a license or pay the tax provided for in the ordinance because he regarded himself not covered by the ordinance as one sent by Jehovah God *as an ambassador* or *minister* to preach said gospel as aforesaid, and believing that his voluntary application for such license or the payment by him of such tax would be an act of disobedience to Jehovah's written commandments concerning His ministers, which disobedience would result in his eternal destruction by Almighty God.

The public method of preaching the gospel employed by petitioner is following exactly in the footsteps of the Lord Jesus Christ, who also taught *publicly* and from house to house.—Luke 8:1; Acts 20:20.

The undisputed evidence showed that the petitioner is not a peddler of goods, wares or merchandise, or a "book agent" in the sense ordinarily understood or intended by the terms of the ordinance, because he is an ordained min-

ister of Jehovah God, preaching the gospel from house to house and on the public ways.

Two facts are noteworthy here: (1) The ordinance does not list the occupation of "minister". (2) The ordinance expressly exempts 'agents selling Bibles'.

The above facts are undisputedly established in the trial court, and the Court of Appeals so found. R. 62-65, 39-50.

The undisputed evidence also shows that none of the ministers practicing religion in Opelika had been prosecuted under the ordinance for failure to pay the tax or secure a license. This was admitted by respondent when petitioner offered ten of such ministers as witnesses to testify that they had not been called upon to pay the tax or prosecuted under the ordinance for failure to secure a license. R. 51-53.

On April 3, 1939, petitioner was arrested, charged in the Recorder's Court of Opelika with violation of the aforesaid ordinance, and convicted for a violation thereof on such date, fined $50 and costs and in default of payment thereof was committed to 90 days' hard labor. (R. 11) The conviction was duly appealed from the Recorder's Court to the Circuit Court of Lee County. R. 11.

On November 2, 1939, the case was tried de novo on such appeal and a complaint was filed in said Circuit Court charging petitioner, in four separate counts, with a violation of said ordinance. (R. 12-13) Before evidence was heard on November 2, 1939, petitioner filed his demurrer attacking the ordinance as violating the Federal Constitution. (R. 13-14) At close of the evidence petitioner filed motions to dismiss. (R. 14-16) Said demurrer and said motions to dismiss, duly presented, were overruled by the court and the petitioner was again convicted of the offense as charged, fined the sum of $50 together with costs of $103.05.

In due time, form and manner petitioner filed his motion for new trial, complaining of all said rulings. (R. 17-20) Said motion was continued and overruled December 19, 1939. (R. 20) Notice of appeal to Alabama Court of Appeals was duly given. (R. 17) Bill of exceptions containing all the

evidence was approved and filed February 29, 1940. (R. 20-55) Assignment of errors was duly filed in the Court of Appeals. (R. 56-61) The Court of Appeals reversed the conviction and ordered petitioner discharged. (R. 61) Respondent's motion for rehearing was overruled April 22, 1941. (R. 66) Petition for certiorari was duly filed by respondent in the Alabama Supreme Court and same was submitted on briefs May 1, 1941. (R. 1-2) Judgment of the Court of Appeals was reversed and the conviction in the Circuit Court affirmed on May 22, 1941. R. 2-3.

Federal Questions Presented

In the trial court by (1) demurrer filed against the complaint (R. 13-14), (2) motions to dismiss filed during and at the close of the evidence (R. 14-16), and (3) motion for new trial (R. 17-20), the petitioner contended that

(a) he was an ordained minister and hence not within the provisions of the ordinance, and

(b) the ordinance as construed and applied deprived him of his rights of freedom to worship Almighty God, freedom of conscience, speech and press, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

These contentions were each overruled by the trial court. In Alabama Court of Appeals by assignment of errors petitioner duly raised the same contentions: (R. 56-61, grounds "First" and "Sixth") The Court of Appeals sustained each of these contentions, holding that (1) petitioner was an ordained minister and not within the terms of the ordinance, and (2) the ordinance as construed and applied was unconstitutional. (R. 62-65) The Alabama Supreme Court finally passed upon each of said federal questions or assignments attacking validity of the ordinance, and held

the legislation valid and constitutional, both on its face and as construed and applied. (R. 3-9) Each of the aforesaid grounds has been brought to this court by specific assignment contained in the petition for writ of certiorari, duly and timely filed herein.

Specification of Errors to Be Urged

Petitioner assigns the following errors in the record and proceedings in said cause.

The Supreme Court of Alabama committed reversible error in failing to hold that:

1. The ordinance unreasonably and unlawfully denies and abridges petitioner's right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of petitioner's conscience, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

2. The ordinance unreasonably and unlawfully denies and abridges petitioner's right of freedom of press, contrary to the United States Constitution, Fourteenth Amendment, Section 1.

Points for Argument

POINT ONE

Petitioner is not engaged in any of the occupations mentioned in the ordinance and is an ordained minister of Jehovah God, worshiping Almighty God by preaching the gospel of God's kingdom through distribution of Bible literature explaining God-given prophecies; therefore the wrongful misapplication of the ordinance to petitioner deprives him of his right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of petitioner's conscience, all contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

POINT TWO

Petitioner is a distributor or circulator of information and opinion, incidentally accepting contributions, and the ordinance on its face and as construed and applied unlawfully deprives him of his right of freedom of press, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

Preliminary Argument Summary

The decision below is based on a false premise; that is to say, that freedom of press extends only to "free" or gift distribution of literature, and that the constitutional safeguard does not protect SALE of literature or the simultaneous distribution and acceptance of contributions to defray cost of publication.

The opinion rests on *Cox* v. *New Hampshire*, 312 U. S.

569, where right to license a parade on the streets for purpose of "regulating" use of streets was sustained. That case did not hold that *distribution of literature* could be licensed or taxed; but, contrariwise, affirmatively found "that the *distribution of pamphlets* and folders by the groups 'traveling in unorganized fashion' would have had as large a circulation . . . as [when] published by them while in parade . . . " The New Hampshire statute was not a revenue measure.

Manchester v. *Leiby*, 117 F. 2d 661, is not in point and does not govern here, because it concerned only an ordinance requiring 'identification' and not a permit or license. That *Manchester* v. *Leiby* opinion is repugnant to the Constitution and applicable opinions by this Court. (See *Herder* v. *Shahadi*, 14 A. 2d 475, where an identical ordinance was outlawed.) Denial of certiorari (61 S. Ct. 838) does not mean that this Court approved the reasoning or the holding of the First Circuit Court of Appeals. See *United States* v. *Carver*, 260 U. S. 482, 490.

A minister of the gospel cannot be licensed to perform acts of worship of Almighty God. Furthermore, the ordinance does not mention or contemplate ministers. The constitutional "right" to serve Almighty God cannot be taxed or licensed. It is not a "privilege", but a *right*. As construed, the ordinance licenses acts of worship; that is to say, preaching the gospel by distribution of literature explaining the Bible. To permit such taxing or licensing is authorizing and encouraging an unlawful joinder of "state and church".

The street is the natural and proper place to preach the gospel *in the manner* done by petitioner. The ordinance is not regulatory in nature. The power conferred thereby is the "power to destroy". The taking of contribution when distributing the literature is incidental to petitioner's main activity of preaching the gospel. There are no exceptions shown to exist warranting interference with petitioner's acts of worship by application of the ordinance.

The law of Almighty God is supreme, and when a law of the state requires His minister or ambassador to secure a license as a condition precedent to the doing of what Jehovah commands him to do, the minister must obey God and refuse to apply for the license. If he compromises and secures the license he must suffer everlasting death at the hand of Almighty God.

In such a conflicting situation the Constitution requires that the law yield to conscience of the individual molded by Jehovah God.

Attempt is made to distinguish the ordinance in question from the tax law condemned in *Grosjean* v. *American Press Co.*, 297 U. S. 233. The ordinance by its terms through licensing "agents," "book agents," "newspapers," "dealers or newsstands selling or distributing periodicals," is directly aimed at *circulation*. The greater the circulation or distribution, the greater the required license fee payments.

The Court will take judicial notice that the big newspapers and national weekly periodicals and magazines are distributed by hundreds of thousands, if not millions, of boys and men on the streets and from house to house in every municipality of the land, and that ordinary distributors of pamphlets and leaflets are poor. There is no difference between proportionately taxing the publishing corporation having the larger circulation and imposing the license tax or fee upon a boy or other person distributing pamphlets or leaflets. The result, regardless of motives, is to discourage, hinder or destroy circulation.

The ordinance is not confined to SALE of literature but requires a license for "free" or gift distribution. The ordinance requires the distributor of the pamphlet, historically the most effective instrument used in establishing freedom of press and liberty for all in this country, to submit to being licensed before distributing literature to further enlightenment, progress and reform in the community.

The claimed intent to raise revenue should not and will

not blind the judicial eye to the effect of the law. To sustain the law would result in retrograde movement toward a licensed press and ultimate suppression of one of the most vital of civil rights, freedom of the press.

On its face and as applied in the case at bar, the ordinance is therefore not a general taxing law for raising revenue, but under the *guise of tax* it licenses "distribution and circulation" of printed information and opinion; hence it strikes at the very foundation of freedom of the press. The fact that it does not provide for prior censorship does not save it.

The law has another equally vicious provision: the unbridled right to revoke without cause at any time the license granted. The tax is arbitrary, discriminatory and unreasonable and has no fixed standard. It is not one of the ordinary forms of taxation for support of government contemplated by the *Grosjean v. American Press* case.

ARGUMENT

POINT ONE

Petitioner is not engaged in any of the occupations mentioned in the ordinance and is an ordained minister of Jehovah God, worshiping Almighty God by preaching the gospel of God's kingdom through distribution of Bible literature explaining God-given prophecies; therefore the wrongful misapplication of the ordinance to petitioner deprives him of his right of freedom to worship Almighty God as by Him commanded in His written Word and according to dictates of petitioner's conscience, all contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

A

Petitioner is an ordained minister of Jehovah God regularly and exclusively engaged in preaching the gospel, and his conduct is an act of worship of Almighty God, Jehovah, not included, either expressly or by inference, within terms of the ordinance.

B

Acceptance of contributions for literature used to preach the gospel is collateral and secondary to the main object of petitioner to preach the gospel.

C

Ambassadors or ministers of Almighty God and Christ Jesus cannot be licensed or taxed by the State for the performance of their duties as such without unlawful and unconstitutional joinder of State and Church.

D

Exercise of the civil right to freely worship Almighty God under the constitutional safeguard cannot be taxed or licensed because the 'power to tax is the power to destroy' the right.

E

The ordinance as construed and applied deprives petitioner of his right of freedom to serve, or worship, Almighty God by informing others through distribution of God's recorded Word and recorded explanations thereof, in obedience to God-given commands and according to dictates of petitioner's conscience.

The Fourteenth Amendment secures to every individual the right of freedom of worship. Freedom of conscience and freedom to choose and adhere to any belief or practice pertaining to the Bible is guaranteed to all. The state cannot

by statute, whether such be a license or a tax statute, deny the right to preach or to disseminate one's views concerning fulfillment of Bible prophecy. *Cantwell* v. *Connecticut*, 310 U. S. 296.

From the foundation of the United States this country has been recognized and declared by this Court to be "a Christian nation". *Holy Trinity Church* v. *United States*, 143 U. S. 457. This means that its people endeavor to follow in the footsteps of Christ Jesus. All followers of Jesus Christ are duty bound to obey the law of Almighty God and to follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) Jesus set the only example to follow when He said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written of Him that He went throughout every city and village teaching and preaching the kingdom of God. (Mark 6:6; Luke 8:1) See also Matthew 10:7, 12-14. Jesus and His apostles taught publicly.—Acts 20:20; see also Proverbs 1:20, 21.

A minister of Jehovah God, following in the footsteps of Jesus, is a witness for Jehovah God, viz., one of Jehovah's witnesses. "Ye are my witnesses, saith the LORD [JEHOVAH], that I am God." (Isaiah 43:10-12) Jehovah's witnesses are commanded by Almighty God to preach, as it is written at Isaiah 61:1, 2, to wit: "The Spirit of the Lord God is upon me; because the LORD hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the LORD, and the day of vengeance of our God; to comfort all that mourn."

Jesus said that He came into the world for only one purpose, namely, to bear witness to the truthful promise of Almighty God to set up His Theocratic Government to rule the entire earth in righteousness. (John 18:37) According to Matthew 24:14 Jesus commands His followers thus: "This gospel of the kingdom shall be preached in all

the world for a witness unto all nations; and then shall the end come." Jehovah's witnesses are commanded thus to proclaim His judgments against "Christendom" 'publicly and throughout every city until the cities are desolate'. —Isaiah 6:11.

To enable petitioner thus effectively to preach the gospel publicly upon the streets and throughout the city he uses pamphlets, magazines and books which contain the Bible message. The content of the pamphlets he distributed has been heretofore described. That literature he employs as a substitute for talking or sermons. It is more effective because it can be and is studied by recipients in the quiet of their homes; at their own convenience. Thus much time of both recipient and preacher is saved and more people are served. Petitioner's taking of the contribution is incidental or collateral to the primary aim and purpose to disseminate information to benefit every person willing to receive such.

By all it must be conceded that petitioner is an ordained minister preaching the gospel, and that it was solely because he thus preached that he was arrested and prosecuted. All the courts below found that petitioner was arrested because in *his way* he preached the gospel without securing the required license.

It is admitted that clergymen representing several religious organizations in the City of Opelika have never been required to comply with the ordinance. Freedom of conscience and of worship are not limited to right of establishment, maintenance and use of a building for the purpose of sermonizing or from a pulpit haranguing the people with vain babblings of politics and society. That constitutional liberty includes the right of every inhabitant of this land to teach and practice Bible truths by following in the footsteps of Jesus Christ. From *Watson* v. *Jones*, 80 U. S. 679, 728, we quote:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle,

> and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect."

It is conceded that the activity of petitioner does not violate the laws of morality and property and does not infringe the personal rights of others. To permit the application here of the Opelika ordinance will change the above rule, and thus violate the Constitution.

Jehovah's witnesses are not peddlers within the meaning of the ordinance, and are not required to register under the tax-licensing and permit ordinances of any municipality. In *Thomas* v. *City of Atlanta,* 1 S. E. 2d 598, it was held:

> "We do not think it is the duty of an ordained minister of the gospel to register his business with the city. Neither is it peddling for such minister . . . to sell or distribute literature dealing with his faith . . . "

In *Cincinnati* v. *Mosier,* 22 N. E. 2d 418, a similar licensing ordinance was wrongfully applied to another of Jehovah's witnesses, and in setting aside that conviction the court said:

> "The ordinance . . . can have no more application to the defendant . . . than it could if it were attempted to apply it for an act performed outside the state, county, or city."

In *Semansky* v. *Stark,* 199 So. 129, the peddlers' licensing statute of Louisiana was applied to the work of Jehovah's witnesses. That state's Supreme Court, in setting aside the conviction, said:

> "In view of the nature of these transactions we are of the opinion that the Legislature did not intend to

require those engaged in disseminating the doctrines and principles of any religious sect, either by the distribution, or sale, of books or pamphlets pertaining to such, to pay a peddler's license, or to classify them as peddlers."

Similar conclusions have been reached in other cases involving Jehovah's witnesses.

State (South Carolina) v. Meredith (1941), 15 S. E. 2d 678

Reid et al. v. Borough of Brookville [Pa.] et al. (1941), 39 F. Supp. 30

Donley et al. v. City of Colorado Springs (1941), 40 F. Supp. 15

Kennedy et al. v. City of Moscow [Idaho] et al. (1941), 39 F. Supp. 26

Zimmermann et al. v. Village of London (Ohio) (1941), 38 F. Supp. 582

Douglas et al. v. City of Jeannette [Pa.] et al. (1941), 39 F. Supp. 32

To permit or to encourage the application of this type of ordinance to the activity of preaching the gospel is to allow the state to *regulate the church*, which would ultimately permit politicians and others to establish through the state a *state religion*, or through license or taxation to suppress and destroy freedom to worship Almighty God. This would be effected by licensing or taxing the followers of Jesus Christ. Thus the people of America would be pushed back into the miserable condition of intolerance, lethargy and indolence of the dark ages from which founders of this "land of liberty" fled during the reign of King George III. All *tendencies* to accomplish a joinder of "church and state", either directly or indirectly (as attempted here), should be "nipped in the bud". The sedulous avoidance by America of any move toward joinder of "church and state" is dis-

cussed in *The Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; and in the *Columbia Encyclopedia* (Columbia University Press). See *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

Petitioner refused to apply for a license because he regarded himself as sent by Jehovah God to do His work and believes that such application *by him* would be an act of disobedience to Jehovah God that would result in his (petitioner's) everlasting destruction. R. 4, 62.

God's law and the requirements of the covenant into which He has taken His ministers, such as petitioner, are supreme. (Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7) Neither human creatures nor human powers can set aside the requirements of the law of Almighty God, nor prevent the individual conscientiously to obey the God-given mandate. Nor can such prevention be accomplished by mob violence or by laws mischievously framed or misapplied by men. (Cooley, *Constitutional Limitations*, 8th ed. p. 968) When confronted with inconsistent demands of the two, Jehovah's servants adopt the answer provided by Him, to wit, "We ought to obey God rather than men." (Acts 5:29) They desire life, which comes only from Almighty God to those who are wholly obedient to His law. (Psalm 36:9; John 17:3) "The law of [Jehovah] is perfect, . . . the statutes of [Jehovah] are right, . . . the commandment of Jehovah is pure."—Psalm 19:7, 8.

Jehovah's witnesses are ambassadors for Jehovah's Theocratic Government under Christ. (2 Corinthians 5:20; Ephesians 6:20; see also Jeremiah 49:14; Obadiah 1) Hence the State does not have jurisdiction to intervene by application of law or otherwise to encumber, regulate or interfere with the carrying out of their mission as such ambassadors *in the manner* directed by Almighty God, Jehovah. Consequently petitioner cannot apply for a permit or license without violating his conscience and the covenant which binds him to perform the commands of Almighty

God. Jehovah says that covenant-breakers are worthy of death. (Romans 1:31, 32) Furthermore, petitioner cannot discontinue preaching the gospel as commanded by Almighty God, and he must continue irrespective of persecution, or otherwise suffer everlasting destruction at the hand of the Most High God, whom he has agreed to obey. (Ezekiel 33:8, 9; Acts 3:22, 23; Jeremiah 26) The law of Jehovah never changes. (Malachi 3:6) He saves those who love and serve Him, but all the wicked He will destroy. (Psalm 145:20) Jehovah keeps all His promises.—Isaiah 46:11.

It would be an insult to Almighty God for one of His servants to apply to another human creature for a permit or license to do that which God has commanded His servant to do under pain of everlasting death for refusal or failure so to do.

Solicitation of funds for a religious cause cannot be taxed or licensed. *Cantwell* v. *Connecticut,* supra.

Distribution of literature containing information and opinion cannot be licensed. *Schneider* v. *State,* 308 U. S. 147; *Lovell* v. *City of Griffin,* 303 U. S. 444.

The ordinance specifically exempts 'agents selling Bibles'. Clearly this extends by implication to literature explaining the Bible. The fact that Opelika clergymen acting for various religious organizations are not taxed under the ordinance is proof of this conclusion.

It is submitted that the ordinance as construed and applied denies and abridges petitioner's right of freedom to worship Almighty God, contrary to the Fourteenth Amendment, Section 1; and, therefore, the judgment of the Supreme Court of Alabama should be set aside for this reason.

POINT TWO

Petitioner is a distributor or circulator of information and opinion, incidentally accepting contributions, and the ordinance on its face and as construed and applied unlawfully deprives him of his right of freedom of press, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution.

A

The ordinance on its face unlawfully and unreasonably discourages, hinders and restricts circulation and distribution of pamphlets and other literature containing information and opinion when, incidentally to distributor's main purpose, contributions are accepted by him to defray cost of distribution.

B

The ordinance is void on its face because it restricts and prohibits *free* distribution of pamphlets and other literature containing information and opinion.

C

Exercise of the CIVIL RIGHT of "press activity", as distinguished from exercise of PRIVILEGE competitively to transact commercially gainful business, cannot be licensed or taxed because to permit is to confer the 'power to destroy' the CIVIL RIGHT.

D

The ordinance in question is not regulatory in its aim and nature and is not a general taxing law contemplated by the United States Supreme Court in *Grosjean* v. *American Press Co.*, and is distinguished from decisions relied upon by respondent.

E

The license tax is arbitrary, discriminatory and unreasonable and has no fixed standard.

F

The ordinance on its face and as construed and applied unlawfully denies and abridges petitioner's right of freedom of press.

The Fourteenth Amendment secures to all freedom of the press, against abridgment by the State.

This right and liberty are not confined to printing, but also embrace the right to distribute, to circulate printed informative matter, to disseminate ideas in recorded form. Liberty of circulation is as essential as liberty to print; indeed, without circulation publication would be of little, if any, value. *Ex parte Jackson*, 96 U. S. 727, 733; *Lovell* v. *City of Griffin*, 303 U. S. 444; *Grosjean* v. *American Press Co.*, 297 U. S. 233.

The undisputed evidence and the findings of all the courts below show that petitioner is engaged in activity of "the press".

The primary activity of petitioner was distributing and circulating the two pamphlets, "Face the Facts" and "Fascism or Freedom", which related to present-day problems of great importance and pertaining to government as viewed from the Bible standpoint. To aid in printing and distributing more like literature, so as to carry forward his work, a small contribution of five cents for both pamphlets was received by petitioner. The police testified that petitioner "sold" the pamphlets. Petitioner denied that he "sold" but said he took a "contribution". The difference implied by these terms is not material, inasmuch as the undisputed evidence shows that petitioner was engaged in a benevolent, non-profit, *non-competitive* enterprise for others' welfare,

and that he did not engage in such activity for private gain or profit, or as carrying forward a commercial venture in competition with established local merchants or business.

It is clearly evident that to hold that the constitutional shield protecting freedom of press covers only "free" or *gift* distribution of pamphlets and other printed informative material is to sound the death toll for that most vital of constitutional rights in this country.

Such a doctrine is foreign to American jurisprudence. It is contrary to the fundamental principles of liberty so jealously guarded by the founders of this nation. To thus hold is to make liberty of the press the prerogative of the rich, the well to do, and to deny that right to the poor and less fortunate. See *Hannan et al.* v. *City of Haverhill et al.*, 120 F. 2d 87; *Commonwealth* [Pa.] v. *Reid et ux.*, 26 A. 2d 841. Both of those cases involve activity of Jehovah's witnesses wrongfully charged under similar ordinances.

In *Commonwealth* v. *Reid*, supra, the ordinance of the Borough of Clearfield was very similar to that of Opelika. After quoting from *Lovell* v. *City of Griffin*, supra, President Judge Keller said:

> "The historical reference to 'pamphlets' in that [*Lovell*] opinion and in other opinions of that Court (*Schneider* v. *State* (Town of Irvington), supra, p. 164; *Thornhill* v. *Alabama*, 310 U. S. 88, 97; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-250, etc.) is not limited to 'pamphlets' which are distributed without cost. Every student of history knows that the 'pamphlets' referred to by Chief Justice Hughes in his opinion, and by Mr. Justice Sutherland in the *Grosjean* case, were not for the most part circulated *gratis*, but were distributed to subscribers or sold."

See, also, *The Encyclopædia Britannica*, Vol. 20, Pamphlets, pp. 659-660.

In the case at bar, the license tax provided for, as applied, is not all different from the tax struck down in the case of *Grosjean* v. *American Press Co.*, supra. There the tax was based on gross receipts of the newspaper with circulation over 20,000 copies per week. Here the ordinance provides for a license on "Newspapers" operated in the city. (R. 33) It also provides for license tax fee for dealers in periodicals and newsstands selling periodicals, and for license tax for agents selling merchandise. (R. 26, 33) Pamphlets, periodicals and newspapers are included within the meaning of the term "merchandise" by the trial court and Alabama Supreme Court. Local and transient agents or dealers in books are likewise licensed. R. 38.

It is a well-known fact (of which this Court will take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as "Collier's", "The Ladies Home Journal," "The Saturday Evening Post" and "Liberty". This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

While casual consideration might lead one to believe that the ordinance in question is one of the 'ordinary forms of taxation for support of the government', yet a more careful consideration thereof conclusively shows that it is adroitly aimed, whether unwittingly or deliberately, at *circulation* and can be misused to utterly destroy distribution of literature containing information and opinion.

A case directly in point, decided November 5, 1941, involving four of Jehovah's witnesses, was prosecuted under an identical license-tax ordinance of the City of Rutland, Vermont. It is styled *State of Vermont* v. *Greaves* (and three others), ... A. 2d ... There the Vermont Supreme Court said:

". . . respondent, Elva Greaves, is charged with a violation of section 22 of chapter 21 of the Rutland City ordinances as amended. Briefly stated, the offense alleged is that on, to wit, the 19th day of April, 1941, at the City of Rutland, the respondent did 'carry on the business of "peddler" by selling pamphlets for money without obtaining a license from said City of Rutland so to do, . . .' Trial was by jury in the Rutland Municipal Court, a verdict of guilty returned, judgment entered thereon and the case is here upon exceptions by the respondent.

"The parts of the ordinance in question which are here material are as follows: 'No person shall carry on the business of . . . peddler . . . within the city, . . . without first obtaining a license therefor as provided in this chapter, . . .'

". . . respondent's motion for a directed verdict was upon the grounds that she was not a peddler but did disseminate teachings of the Bible by distributing books, booklets, pamphlets and magazines for which she received money contributions; that the undisputed evidence shows that she is not guilty and also upon the grounds that the ordinance in question as applied to her is contrary to the provisions of both the Federal and State Constitutions in that she has thereby been deprived of her rights as to freedom of speech, freedom of press and freedom of right to worship Almighty God. . . .

"The respondent is an ordained minister of a . . . class . . . designated as 'Jehovah's witnesses'. As such she believes that she is commanded by the Almighty to spread the Gospel as she and other members of this organization believe it to be and that it is her duty to do so. She did this by publicly taking positions on the sidewalks and streets in the City of Rutland, equipped with a magazine bag and several magazines known as the 'Watchtower' and 'Consolation'. As people passed

she would call out some statement referring to religion and if any person gave attention and wished a magazine she sold it to him for five cents which was no more than enough to cover the cost of publishing same. She sold several of these in this manner on the day mentioned in the complaint. The object of this distribution of magazines was to place in the hands of the people in general true Biblical teachings as she understands them and believes them to be and not for the purpose of any financial gain or material personal benefit whatsoever. She had no license from the City of Rutland to carry on therein the business of peddler.

"Section 24 of this ordinance provides that the fee for a peddler's license shall be from $10. to $200., depending upon the manner of travel of the applicant and the capacity of the vehicle used to transport the goods he desires to sell.

"There is no claim that the printed matter in the magazines in question was obscene or otherwise objectionable. . . .

"Whether the license fee with which we are concerned is considered as a license fee or a license tax, its effect upon circulation of these magazines is the same in either case. In considering the constitutional question here this ordinance must be tested by its operation and effect rather than by its form. Near v. State of Minnesota, 283 U. S. 697, 708; Henderson v. Mayor, 92 U. S. 259, 268. Therefore what is stated by the United States Supreme Court in the case of Grosjean v. American Press Company, 297 U. S. 233, . . . has great weight in determining the question in the case at bar. . . .

"Freedom of the press secured to the people of the United States by the First and Fourteenth Amendments to the Constitution applies not only to printed matter circulated without charge to the recipients but

it also *applies when a charge is made for it.* Grosjean v. American Press Co., supra; Lovell v. City of Griffin, supra.

"It is true as the State contends that within limits permitted by law a municipality may enact regulations in the interest of public safety, health, welfare or convenience. Therefore, we now come to the question as to whether this ordinance as applied to the facts in this case is a valid regulation.

"In every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the freedom protected by the United States Constitution. Cantwell v. State of Connecticut, 310 U. S. 296; Schneider v. State (Town of Irvington, N. J.) 308 U. S. 147.

"As applied to the facts in this case this ordinance *makes no provision regulating the manner of carrying on the business of peddlers* within Rutland City. The respondent having paid $10 and so *obtained a license would then have been free to peddle* these magazines in the City of Rutland at any time, in any place, and in any manner, wholly unrestricted by any provision in the ordinance. In short, her freedom to peddle these magazines there would be as complete as though the ordinance did not exist. To enforce the terms of this ordinance under the circumstances of this case would be to *compel the respondent to pay* a fee of $10 in order *that she might avail herself of a privilege secured to her* by the United States Constitution. Also that this requirement of the ordinance, if enforced here, would operate as a *restraint upon the circulation* of the magazine in question is too plain to need further discussion. Grosjean v. American Press Co., supra. It follows that as applied to the facts here this ordinance *cannot be justified as a valid regulation.* Grosjean v. American Press Co., supra; Cantwell v. Connecticut, supra; Lovell v. City of Griffin, supra.

"The only question presented here and therefore the only one considered is the application of this ordinance to the facts in this case. The fact that when so applied the ordinance is unconstitutional does not determine that it would be invalid for that reason when applied to other and different facts. Whitney v. People of the State of California, 274 U. S. 357, 378; Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 289.

"We hold that this ordinance as applied to the respondent under the circumstances shown by the evidence in this case is unconstitutional because when so applied *it abridges rights of the respondent* as to freedom of the press secured to her by the First and Fourteenth Amendments to the United States Constitution.

"Judgment reversed and the respondent is discharged." [Italics added]

Here, too, the burden is imposed upon the "distribution" or "circulation" end of publication which, under the constitutional protection, is intended to be left unhampered and unrestrained by all forms of license and permit laws. Under the Opelika ordinance, however, every newsboy or other person distributing any pamphlet, book or periodical is required to pay the license fee. The license fee imposed is *not for the purpose of regulating* and paying necessary expense incidental to use of the streets, as was the *parade* license fee in *Cox* v. *New Hampshire,* 312 U. S. 569. There the fee collected was used in providing policing of *parades.* Here, however, no such aim or purpose exists. Here, ostensibly, the object appears to be *revenue raising,* but, really, the aim, purpose and *effect* or result is destruction of distribution or circulation, because the burden of tax is placed on the distributor.

Suppose a citizen interested in good government found that a particular administration of officials in Opelika were corrupt and incompetent, and he desired to print a pam-

phlet making known such fact for the purpose of effecting a change of administration. If he prepared such a pamphlet and distributed it, either *gratis* or for a small charge, he would be required to get a license, and on failure to do so could be prosecuted and convicted.

Let us assume that the Nazis and Fascists were moving in secret to invade the Gulf shore of Alabama, and some good citizen learning this fact printed millions of pamphlets or leaflets for distribution throughout Alabama. In Opelika, under this ordinance, both he and every loyal citizen aiding him to distribute such printed matter could be convicted for their failure to pay the tax and secure a license. A modern-day Tom Paine or John Milton could not safely function with his pamphlets in the City of Opelika.

The tax here in question directly encumbers and smothers distribution and circulation of literature; and if held to be valid, it could be used to destroy circulation. This is plain enough when we consider that if it were increased to a high degree, as it could be (*Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45, and cases cited), it well might result in completely suppressing both distribution and even publishing to point of destruction.

As our further argument we here adopt in its entirety the opinion of Mr. Justice Sutherland in *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-251, and also the statement appearing in *Near* v. *Minnesota*, 283 U. S. 697, 707-716 et seq.

The ordinance is clearly *not regulatory*. The license tax provided for is not a general taxing law for support of government as contemplated by this Court. The ordinance throws the burden upon the pamphleteer or other distributor of limited means and thus stops circulation. A thousand distributors would be required to pay from $5,000 to $25,000 to function under the ordinance. Under the same ordinance the one printer for the thousand distributors would be required to pay only $50. The unreasonableness of the ordinance license tax is manifest.

We submit that the ordinance as construed and applied and also, by express provisions, on its face violates the Fourteenth Amendment by reason of denial and abridgment of freedom of press. The decision of the Alabama Supreme Court is contrary to the following decisions and opinions of other courts, to wit:

Schneider v. State,
308 U. S. 147

Lovell v. City of Griffin,
303 U. S. 444

Grosjean v. American Press Co.,
supra

Donley et al. v. City of Colorado Springs,
40 F. Supp. 15

Zimmerman et al. v. Village of London (Ohio),
38 F. Supp. 582

Kennedy et al. v. City of Moscow (Idaho),
39 F. Supp. 26

Hannan et al. v. City of Haverhill [Mass.] et al.,
120 F. 2d 87

Reid et al. v. Borough of Brookville [Pa.] et al.,
39 F. Supp. 30

Commonwealth [Pa.] v. Reid et ux.,
20 A. 2d 841

State [Fla.] ex rel. Hough v. Woodruff,
2 So. 2d 577

State [Fla.] ex rel. Wilson et al. v. Russell,
1 So. 2d 569

Village of South Holland [Ill.] v. Stein,
26 N. E. 2d 868; 373 Ill. 472

In each of the above cases the identical activity of Jehovah's witnesses was involved and the challenged ordinances and statutes were held to be unconstitutional both on their face and as construed and applied, because unlawfully abridging the right of freedom of press.

This Court can take judicial notice of the clearly reasoned opinion of a humble city magistrate of this nation's largest and *greatest* municipality, involving an identical ordinance. Very early New York City's Magistrate Morris Rothenberg discerned and applied the American principles so ably set forth by Chief Justice Hughes in *Lovell* v. *Griffin*, supra. In *People* v. *Max Banks* (July 20, 1938), 6 N. Y. S. 2d 41, Judge Rothenberg said:

> "I hold it to be an infringement of the First and Fourteenth Amendments to the Constitution of the United States guaranteeing liberty of the press to require the payment of a license fee for the privilege of *selling a pamphlet on the public streets* and to impose a penalty of fine and imprisonment for violation of the section mentioned.
>
> "In applying the principle laid down in the Grosjean case to the facts in the Lovell case the Chief Justice said:
>
> > 'The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . . The license tax in *Grosjean* v. *American Press Company*, supra, was held invalid because of its direct tendency to restrict circulation.'
>
> "Following this reasoning it is clear that the imposition of a license fee or tax as a prerequisite to the *sale of pamphlets on the streets* has a direct tendency to restrict circulation, notwithstanding the fact that

> Article 6 of the Administrative Code [City of New York] permits free distribution of literature *on the public streets without restriction.* Free circulation depends as much and conceivably more upon the sale than upon free distribution, considering the cost involved in the free distribution of literature. Adequate circulation may only be rendered possible through *sale* defraying the cost of production. How effectively a license fee or tax may act as a curtailment upon *sale* and consequently upon circulation the Supreme Court in the Grosjean case said 'becomes plain when we consider that if the tax were increased to a high degree, as it could be, if valid . . . it well might result in *destroying circulation*'." [Italics added]

In *People* v. *Finkelstein,* 2 N. Y. S. 2d 941, also it was held that license tax ordinances of the City of New York very like the license ordinance of Opelika were unconstitutional as construed and applied to street distribution of literature.

Here the case of *Thomas F. Stein, Jr., doing business under the name and style of Stein Brokerage Co.,* v. *Alabama* (. . . U. S. . . ., 61 S. Ct. 838, 29 Ala. App. 565, 199 So. 13), relied on by the Alabama Supreme Court, is not in point because *it did not involve the right of freedom of press.* Pointedly, however, in *Schneider* v. *State,* supra, this Court said:

> ". . . Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at *other personal activities,* but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions." [Italics added]

In *Hannan et al. v. City of Haverhill et al.,* supra, the Federal First Circuit Court of Appeals said:

> " . . . Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the *sale* and distribution of literature of the sort offered for *sale* by the plaintiffs." [Italics added]

Streets are the natural and proper places for dissemination of printed information and the consistently free exercise of the *individual's* right of press activity. *Schneider* v. *State*, supra; *Hannan et al.* v. *City of Haverhill et al.*, supra. See, also, *Hague* v. *C. I.O. et al.*, 307 U. S. 496; *Thornhill* v. *Alabama*, 310 U. S. 88, 95.

There is no claim that petitioner blocked traffic, littered the streets, or that he was guilty of breach of the peace or disorderly conduct or interference with other people's rights while distributing the literature. There is no claim that he operated at any unreasonable time; nor that he disseminated literature of obscene or otherwise hurtful content. He is not charged with any such improper conduct; but even though he were so charged, he could not be prosecuted and convicted under the licensing ordinance in question; for if guilty, in fact, of such improper conduct he can rightly be prosecuted only under statutes specifically prohibiting such offenses.

Giragi et al. v. *Moore et al.*, 58 P. 2d 1249, 64 P. 2d 819, 301 U. S. 670, is not in point because there the tax involved was a general sales tax of one percent of gross proceeds of sales or gross income of business of everyone in the state. The tax was a general income or sales tax and was not a tax on newspapers, pamphlets or other printed informative material, and was not, as here, a tax on distribution or circulation.

This statement also applies to *Arizona Pub. Co.* v. *O'Neil*, 22 F. Supp. 117, 304 U. S. 543, involving the same law as was involved in *Giragi* v. *Moore*, supra. It is manifest that the tax or license in question is much different from the Opelika tax on distributors of pamphlets.

Associated Press v. *N. L. R. B.*, 301 U. S. 103, 133, is not in point because there the only question was that of duty of publisher to comply with labor rate of pay for employees, which is within the exception announced in the *Grosjean* case.

The case of *Reuben R. Donnelley*, etc. v. *City of Bellevue*, 140 S. W. 2d 1024, did not relate to the distribution of printed informative material but was confined to regulation of commercial circulars advertising competitive sale of ordinary articles of merchandise, peddling and sale of which merchandise can rightly be regulated under proper, non-discriminatory ordinance. Thus that case is distinguished. Here, however, we submit incidentally that *freedom of press* extends equally to the *commercial* world and to the *political* world, or sphere, as it does to the *ecclesiastical*, i. e., "spiritual" or "religious". Really, the holding in the *Bellevue* case, supra, is not sound law. That holding even if good law, is not in point or controlling here and should be disregarded.

Conclusion

In today's perilous hours men's hearts are failing them for fear of what they see coming upon the human family. This great *fear* has driven rulers and judges of every land into desperation and perplexity, resulting in a breaking down of justice and morality. Notwithstanding the turbulence and the unparalleled strains and stresses of these momentous hours,

> "a court in the discharge of duty under our system is required to be oblivious to public clamor, partisan demands, notoriety, or personal popularity and to interpret the law fearlessly and impartially so as to promote justice, inspire confidence and serve the public welfare. . . . The perpetuity of democracies has as a foundation an informed, educated and intelligent citi-

> zenry. An unsubsidized press is essential to and a potent factor in instructive information and education of the people of a democracy, and a well informed people will perpetuate our constitutional liberties." (Chapman, J., concurring specially, in *State* [Fla.] *ex rel. Wilson et al.* v. *Russell* [April 8, 1941] 1 So. 2d 569.)

See, also, "Freedom of the Press" (C. A. Peairs, Jr.), 28 Ky. Law Journal (May 1940) 369-410, an arresting review of the vital questions, concluding:

> "[pp. 409-410] ... With the exception of a few noble liberals, who believe that 'liberty of the press means liberty for those with whom we disagree' [FOOTNOTE 126: "Felix Frankfurter, 37 Har. L. Rev. 1029, following the Holmes approach."], the sides taken in questions of this sort depend on whose ox is being gored. ... The First Amendment, and allied provisions, may be mere nebulae in times of comparative natural harmony, but when the mind of a nation becomes aroused against a small minority, they do their greatest work."

During these hectic days a gigantic wave of prosecutions and persecutions against Jehovah's witnesses has swept over this "land of the free and home of the brave". Why? Sophistry and fine reasoning, without sound foundation, have subtly drawn many of the lower courts into the erroneous, un-American position of approving judgments of conviction denying liberty of conscience, of thought, of speech and of press, under the pretext or motive of 'safeguarding national defense interests'. Blind to the ultimate result of such short-sighted and hasty conclusions, such zealous but panicky members of the judiciary have unwittingly dragged segments, at least, of this nation closer to the brink of totalitarian rule.

The only factor which distinguishes this country as a republic with a democratic form of government, and there-

fore the only thing worthy of preservation from totalitarian aggression, is that American heritage epitomized as the "Bill of Rights". Once the freedom anchored and secured thereby is gone, the reason is lost for fighting Nazism and allied totalitarian tyranny.

In this hour of emergency even more than in times of peace there rests upon this nation's courts and jurists—from the lowly magistrate to the Chief Justice—a *higher* duty to scrutinize, to weigh, to appraise the 'substantiality of reasons adroitly advanced in support of *regulation* of free enjoyment of fundamental personal rights', so as to guard against any and all encroachments. Why? The danger of loss, total and permanent loss, in such times as these is intensified a hundredfold.

Here, then, let deepest consideration be given to the *effect* of the challenged ordinance rather than merely to the cold black and white text of its provisions.

Before exercising its regal and judicial power, which is final, let this tribunal, the last bulwark of liberty, consider its own profound expression in another trying hour, in *Ex parte Milligan*, 4 Wall. 2, 120 (1866); and also the later dissenting words of Mr. Justice Sutherland:

> "Do the people of this land—in the providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship . . . ? If so, let them withstand all *beginnings* of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."
>
> *Associated Press* v. *N. L. R. B.*, supra

Finally, we say that the judgment of the Supreme Court of Alabama should be reversed and the judgment of the

Alabama Court of Appeals affirmed, setting aside the conviction of petitioner in the Circuit Court of Lee County and discharging him with his costs.

Confidently submitted,

JOSEPH F. RUTHERFORD

HAYDEN COVINGTON

Attorneys for Petitioner